

Federal Communications Commission

DA 96-1454

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)

Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcast Stations.)
(Sunburg, Minnesota))

MM Docket No.96-179
RM-8859

NOTICE OF PROPOSED RULE MAKING

Adopted: August 30, 1996

Released: September 6, 1996

Comment Date: October 28, 1996

Reply Comment Date: November 12, 1996

By the Chief, Allocations Branch

1. Before the Commission for consideration is a petition for rule making filed by Lac Qui Parle Broadcasting Company, Incorporated ("Lac Qui"), seeking the allotment of Channel 293A at Sunburg, Minnesota, as that community's first local FM broadcast service. Lac Qui provided an engineering study in support of the proposal and indicated it would apply for Channel 293A at Sunburg.¹

2. We believe the proposal warrants consideration because the proposed allotment would provide a first local service to Sunburg, Minnesota. A staff engineering analysis indicates Channel 293A can be allotted to Sunburg consistent with the Commission's spacing requirements

¹ Although Lac Qui's request indicates that the original copy of its proposal was signed, it failed to include an affidavit verifying that the statements contained in its petition were accurate to the best of its knowledge. Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel shall be signed and verified by the party and his/her address stated. In the absence of such verification, the petition may be dismissed. Section 1.401(b) of the Commission's Rules concerning rule making proceedings places petitioners on notice that their proposals must conform with the requirements of Section 1.52 regarding subscription and verification. See also Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes, 5 FCC Rcd 3911, n.41 (1990). Petitioner is requested to rectify this omission in its comments.

without a site restriction.²

3. Section 307(b) of the Communications Act of 1934, as amended, requires that the Commission allot channels "... among the several states and communities." The Commission has defined "communities" as geographically identifiable population groups. Generally, if a community is incorporated or listed in the U.S. Census, that is sufficient to satisfy its status. Absent such recognizable community facts, the petitioner must present the Commission with sufficient information to demonstrate that such a place has social, economic, or cultural indicia to qualify it as a community for allotment purposes. See, e.g., Oak Grove, FL, 5 FCC Rcd 3774 (1990); Hannibal, OH, 5 FCC Rcd 3315 (1990); and Statenville, GA, 5 FCC Rcd 2685 (1990). We do recognize that Sunburg is incorporated and listed in the census, meeting the basis criteria for community status.³ However, we may find that a population grouping of 117 people does not constitute a community for allotment purposes where the community may be devoid of the customary facts associated with determining community status, such as a library, schools, shopping centers, churches, a newspaper and social or civic organizations and some form of city government. See Searles Valley, CA, 3 FCC Rcd 5221 (1988); see also Naples, FL, 41 RR 2d 1549 (1977). Therefore, Lac Qui is requested to submit information regarding Sunburg to demonstrate whether it has any commercial establishments, social, economic, cultural or religious organizations, municipal services, or government units that identify themselves specifically with Sunburg.

4. In view of the fact that the proposed allotment would provide a first local service to Sunburg, the Commission believes it would serve the public interest to solicit comments on the proposal to amend the FM Table of Allotments. Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

Community	Channel No.	
	Present	Proposed
Sunburg, Minnesota	-----	293A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **October 28, 1996**, and reply comments on or before **November 12, 1996**, and are advised to read the Appendix for the proper

² The coordinates for Channel 293A at Sunburg are 45-20-54 and 95-14-12.

³ The 1995 Rand McNally Commercial Atlas indicates that Sunburg is incorporated, with a bank, post office and zip code and a population of 117 people.

procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C., 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

Maynard R. Meyer, Vice President
Lac Qui Parle Broadcasting Co., Inc.
623 W. 3rd Street, P. O. Box 70
Madison, Minnesota 56256

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding contact Kathleen Scheuerle, Mass media Bureau, (202) 418-2180. for purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the

person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal communications Commission, Washington, D, C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D. C.